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LEGAL AFFAIRS

Trustbusting's Top European Cop

The EU's Mario Monti is picking up the mantle now that Washington favors antitrust minimalism

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The rebirth of antitrust has been one of the most dramatic business stories in years. Reviving memories of Teddy Roosevelt's epic battles with Standard Oil and American Tobacco, Clinton-era trustbusters Joel I. Klein and Robert Pitofsky challenged a long list of the country's most powerful companies, ranging from American Airlines (AMR) to Microsoft (MSFT) to Visa to America Online (AOL).

But now Justice Dept. antitrust chief Klein is gone and Federal Trade Commission Chairman Pitofsky is on his way out. In their places, George W. Bush is nominating, respectively, Charles A. James and Timothy J. Muris--two conservatives who are expected to toss out many of their predecessors' pet legal theories and restore an era of antitrust minimalism. But Corporate America shouldn't relax just yet. Aggressive trustbusting is still alive and well--in, of all places, Europe, where price-fixing was an accepted business practice until a few years ago, secret cartels have been discovered in many industries, and key competition laws are brand new.

PENALTIES. Suddenly, the world's most feared trustbuster is Mario Monti, chief of the European Union's competition office. And the 58-year-old Yale-trained economist is picking up right where his allies Klein and Pitofsky left off (table). While U.S. courts will probably let Microsoft Corp. off with a slap on the wrist, the EU is driving ahead with a widespread investigation of the company's business practices that may ultimately result in far more serious penalties than any levied in Washington. Intel Corp. (INTC), meanwhile, announced earlier this month that it is under investigation in Europe for marketing and licensing tactics that the FTC has already examined and deemed legitimate.

Monti is also taking a hard look at mergers--even those solely involving U.S. companies. Exhibit A is General Electric Co.'s (GE) union with Honeywell International Inc. (HON)--which Monti has the right to review because the merged company sells more than $225 million annually in Europe. Despite a personal plea from GE Chairman John F. Welch, who flew to Brussels to meet with him, the EU bureaucrat is forcing the deal to go through a second-stage review. That could postpone the merger by up to four months--an embarrassment for America's most admired CEO, who originally predicted that the deal would sail through. "Yes, we had differences of opinion," says Monti of his February meeting with Welch. "He is right to give himself a bad grade for predicting the merger would get through." Holding forth in his unassuming Brussels office, Monti adds: "I think he had a

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strong expectation it could be cleared quickly."

Slowly but surely, U.S. companies are realizing that Brussels may be an even better place to derail their rival's deals than Washington. Europe's Microsoft investigation--which, unlike the U.S. antitrust battle, focuses on the market for so-called server software--has been largely spurred on by Sun Microsystems Inc. (SUNW) The GE-Honeywell deal is under attack by a posse of rival aerospace companies including United Technologies (UTX) and Rockwell (ROK), as well as Britain's Rolls-Royce PLC (RYCEY). "Here in the U.S., there's this old thought that if a competitor complains, it must be something good for competition," says Glenn B. Manishin, an antitrust partner at Patton Boggs in Washington. "The Europeans are more hospitable to listening to complaints from competitors."

Europe's interest in antitrust dates back to the late 1980s, when regulators started opening up markets, privatizing national monopolies, and cracking down on a centuries-old trade guild tradition of close industry cooperation. Because many of the EU's laws are modeled after U.S. laws, Europe and the U.S. have rarely disagreed about antitrust cases over the past decade. In fact, the only major deal where there was friction was the 1997 merger between Boeing Co. and McDonnell Douglas--which was cleared by the FTC and initially opposed by the EU. But that one deal proved that the issue has plenty of potential to be explosive. U.S. politicians threatened a trade war, and the Europeans didn't back down until top Clinton Administration officials got on the phone to push for the deal.

Now that the Bush team is about to take over, some experts foresee more situations like Boeing-McDonnell Douglas--and that antitrust could join beef hormones, privacy, and global warming as a new source of irritation between the U.S. and Europe. "From the beginning of time until now, it has been the U.S. authorities leading antitrust," says Pontus Lindfelt, an antitrust attorney at the Brussels office of U.S.-based law firm White & Case. "Maybe now, for the first time in history, Europe will take the lead."

Monti may be leading the charge, but there's not always a full army behind him. As Boeing-McDonnell Douglas showed, European authorities have often ducked transatlantic controversy. And Monti's ability to do anything extreme is limited by the fact that the European Commission has little independent authority. Its power is derived from its 15 member states. That means that Monti gets lobbied by business and government leaders and must have all of his key decisions approved by the European Commissioners. It's not easy for him to take on a politically connected multinational such as GE, which employs 80,000 Europeans. Monti is also restricted by the size of his antitrust staff--about 500 vs. nearly 1,300 at Justice and the FTC.

CEREBRAL. But the cerebral, unflappable Monti is no pushover. Last year, he rejected the proposed Volvo-Scania merger--even though Swedish Prime Minister Goran Persson visited him to lobby for the deal. And the Europeans have proved willing to anger U.S. corporate giants. In 1998, Monti's predecessor, Karel Van Miert, forced MCI Communications and WorldCom (WCOM) to divest part of their Internet backbone operations.

In fact, in some respects Monti has more power than his U.S. counterparts. He can stop a merger without going to court. He can also rely on some European competition laws that go way beyond those in the U.S. Under a concept known as "collective dominance," for instance, EU trustbusters can stop a merger that would cause an industry with five players to shrink to four--a competitive scenario that U.S. antitrust law generally tolerates. More important, the Europeans are learning to be comfortable with antitrust law and are becoming confident about enforcing it.

The test of Europe's resolve could well be the GE-Honeywell merger. The deal appears headed for approval by the Justice Dept. But Monti worries that the company could drive rivals out of the jet-engine market by bundling GE's products with avionics gear and attractive financing. This problem could be easily remedied, of course, if the company agrees to sell some key aerospace units. But GE says that's a dealbreaker.

So the stage appears to be set for a showdown--and not just between the Jack Welch and Mario Monti. For the first time ever, there's also a growing conflict between U.S. and European antitrust policy. That could lead to plenty of transatlantic fireworks down the road.

By Mike France in New York, with William Echikson in Brussels and Dan Carney in Washington

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